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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

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EVA PIERSON

v.

Docket No. 20-86-224-1

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Eva Pierson, is employed by the Kanawha County Board of Education as a cook at Ruffner Elementary School. She applied for and received a summer cook position at Owens Elementary in 1985 but finished out the summer in an aide position. In 1986 she reapplied for a position in the Owens summer program but was refused on the basis of the practice utilized by Kanawha County Schools in summer employment. She filed a grievance on June 13, 1986 and a level two evidentiary hearing was conducted on June 20, 1986; the parties waived an evidentiary hearing on appeal to level four.¹

¹ The grievance was submitted to the hearing examiner on the transcript of evidence of the level two hearing, which was received on October 23, 1986. The remainder of the record was received on November 21, 1986.

Grievant has been employed by the board of education for over two years and was a cook at Roosevelt Junior High School her first year. She thereafter transferred to Ruffner Elementary and in the summer of 1985 was employed as a Cook I at Owens Elementary. However, after working slightly over three weeks as a cook at Owens she was requested to transfer to an aide position because another employee with more seniority wanted the cook position. Accordingly, she finished out the 1985 summer session, i.e., three weeks and four days, as a teacher's aide at Owens. (T. 10).

In the summer of 1986 she again sought employment at Owens as an aide, cook, bus aide, janitor or whatever position was available and bid specifically on a teacher's aide position which had been posted (T. 12). She was refused the position and seeks to be restored to the summer aide position and awarded the pay for the position for the summer of 1986.

Mr. Stanley Cobb, director of personnel of Kanawha County Schools, is in charge of selection and placement of service personnel and testified that grievant was not awarded the aide position in 1986 because the employees selected were senior in summer seniority pursuant to the "building seniority" practice utilized in Kanawha County. (T. 14). Counsel for the school board contends that summer positions are temporary positions

and the practice used by Kanawha County is not inconsistent with law.²

In addition to the foregoing factual recitation, the following specific findings of fact and conclusions of law are appropriate.

FINDINGS OF FACT

1. Grievant is employed by the Kanawha County Board of Education as a 200 day cook at Ruffner Elementary School.

2. In 1985 she was working at Ruffner Elementary as a cook and bid upon and was awarded a summer cook position at Owens Elementary.

3. After working in the cook position for slightly over three weeks a school official requested grievant transfer to a teacher aide position and relinquish the cook position to a more senior employee. Grievant relinquished the cook position and finished out the 1985 summer session at Owens Elementary as a teacher's aide, a position she held for three weeks and four days.

² Counsel for grievant notes that while it is admirable that the school board would desire to give preference to senior employees at individual facilities, these senior employees had the opportunity to take these positions when they were posted in 1985 but declined; that in most situations there is only one opportunity given for a position and the employee who bids upon and receives it should retain it. (T. 17).

4. In the summer of 1986 grievant again applied for a position at Owens Elementary and bid on the aide position she had held the previous summer. She was not awarded the position because a 200 day employee assigned to Owens Elementary during the regular year bid upon and was awarded the position.

5. This procedure was in accordance with the Kanawha County Schools practice of first offering summer positions in extended school year programs to the 200 day employees assigned to the particular school during the regular school year. This practice is also known as "building seniority".

CONCLUSIONS OF LAW

1. W.Va. Code, 18A-4-8b(b) provides for extra-duty assignments on a rotation basis and W.Va. Code, 18A-4-15 provides for hiring substitute employees for temporary service personnel positions but there is no provision for filling "temporary" positions.

2. A service personnel position which is in excess of twenty working days in duration is not a temporary position and must be filled in accordance with W.Va. Code, 18A-4-8b(b) and W.Va. Code, 18A-2-5. Shirley Mullins v. Kanawha County Board of Education, Docket No. 20-86-222-1.

It is therefore Ordered that the grievant is entitled to be reinstated to the summer teacher's aide position she held in the summer of 1985 and to payment of the loss of pay for the summer of 1986, offset by any income derived for that period.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

A handwritten signature in cursive script, reading "Leo Catsonis", written over a horizontal line.

LEO CATSONIS

Chief Hearing Examiner

Dated: December 18, 1986